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59144	7590	03/14/2008	EXAMINER	
CAHN & SAMUELS, LLP			FLEISCHER, MARK A	
1100 17th STREET, NW				
SUITE 401			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			4143	
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			03/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,735	<b>Applicant(s)</b> BOSS ET AL.
	<b>Examiner</b> MARK A. FLEISCHER	<b>Art Unit</b> 4143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 01 December 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/146/08)  
 Paper No(s)/Mail Date 01 December 2003
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Status of Claims**

1. This action is in reply to the Application filed on 1 December 2003.
2. Claims 1–30 are currently pending and have been examined.

**Information Disclosure Statement**

3. The Information Disclosure Statement filed on 1 December 2003 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 11 – 20:**

5. Claims 11 – 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The preamble of independent Claim 11 is not a process, machine, manufacture, or composition of matter, or any improvement thereof. Replacing “*A computer program product having instruction codes*” with “*a computer-executable program tangibly embodied on a computer readable medium*” is a suggestion for how to bring these claims into compliance with 35 U.S.C. 101 because “*a computer-executable program tangibly embodied on a computer readable medium*” is statutory subject matter.

**Claims 21 – 30:**

6. Claims 21 – 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. No element of the aforementioned statute pertains to providing a service. Therefore, the preamble of independent Claim 21 and its dependent claims are not a process, machine, manufacture, or composition of matter, or any improvement thereof.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- a) Determining the scope and contents of the prior art.
- b) Ascertaining the differences between the prior art and the claims at issue.
- c) Resolving the level of ordinary skill in the pertinent art.
- d) Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1–5, 9, 11–15, 19, 21–25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minneman (US 6243740 B1) in view of Williams (US 20020178442 A1).

**Claims 1, 11 and 21**

Note, that although claims 1, 11 and 21 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Also note, that the preambles and portions of the limitations associated with claims 11 – 20 pertaining to computer instructions are addressed in the rejections under 35 U.S.C. §101 above. Minneman, as shown, describes and/or discloses the following limitations.

- A *method for selecting a logical branch in a storyline among a plurality of available storyline branches* (Minneman, in at least the abstract states: "The public [...] communicates, via the device or devices, a signal indicative of their reactions and for effecting a prospective scene selection in the document content that, in turn will vary the narrative." (emphasis added) where 'communicates ...indicative...for effecting' corresponds to a *method for selecting*. Minneman, in at least [0005] (column 1, lines 50-

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1), further describes systems and methods that "have been devised for the private direction of a narrative story through a number of alternative paths and endings [...]" (emphasis added) where 'paths' corresponds to *available storyline branches.*).

Minneman does not specifically describe obtaining votes, *per se*, but Williams, as shown, does.

*based on voters' votes* (Williams, in at least [0030] states: "Two weeks later the audience votes for Ending 1." (emphasis added) where 'audience votes' corresponds to *voters' votes.*), comprising:

- *accumulating the votes from the voters* (Williams, in at least [0007]: states: "Audience feedback that influences programming content may be collected directly from weekly audience polling [...]" (emphasis added) which corresponds to the limitation.);
- *calculating a total for the accumulated votes* (this is inherent in 'audience polling', i.e., the very notion of 'polling' and 'voting' directly implies tallying or summing or counting votes); and
- *selecting a winning tally that corresponds to a storyline branch, based on the total of the accumulated votes* (Williams, in at least [0023-30] states: "Two days later, the audience answers are tallied and the most popular answers are [...] Two weeks later the audience votes for Ending 1." (emphasis added) where 'are tallied' corresponds to *accumulated votes* and 'most popular' corresponds to *selecting a winning tally...and 'audience votes for Ending 1'* corresponds to the winning *storyline branch.*).

Minneman's and Williams' inventions both pertain to utilizing audience participation in modifying the evolution of a storyline. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the inventions of Minneman and Williams to create a more interactive system as this affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

**Claims 2, 12 and 22:**

Note, that although claims 2, 12 and 22 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 1, 11 and 21, respectively, as shown above. Minneman does not specifically describe and/or disclose the following limitation, but Williams, as shown, does.

- *transferring the storyline branch to a content branching system* (Williams, in at least [0021] states: "[T]he [Online Request] is storyline-content that originates within the audience's imagination and then later is culled and incorporated by the staff into the show's storyline." (emphasis added) where 'storyline-content' corresponds to *storyline branch* and 'culled ... by the staff' corresponds to a *content branching system* that manages the *storyline branch*.)

Minneman's and Williams' inventions both pertain to utilizing audience participation in modifying the evolution of a storyline. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the inventions of Minneman and Williams to create a more interactive system as this affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

**Claims 3, 13 and 23:**

Note, that although claims 3, 13 and 23 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 2, 12 and 22, respectively, as shown above. Minneman does not specifically describe and/or disclose the following limitation, but Williams, as shown, does.

- *displaying the transferred storyline branch* (Williams, in at least [0006]: states: "[T]he invention queries will be prescribed to directly determine the show's story line [...]" (emphasis added) where 'show's story line' corresponds to *displaying* ...).

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Minneman's and Williams' inventions both pertain to utilizing audience participation in modifying the evolution of a storyline. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the inventions of Minneman and Williams to create a more interactive system as this affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

**Claims 4, 14 and 24:**

Note, that although claims 4, 14 and 24 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 1, 11 and 21, respectively, as shown above. Minneman further describes and/or discloses the following limitation.

- *selectively excluding votes for a specific storyline branch* (Minneman, in at least [0028] (col. 8, line 55) states: "Alternative embodiments of the invention include directional voting, wherein custom antennas with directional qualities will attend to signals coming from one set of viewers whilst rejecting signals from another." (emphasis added) where 'rejecting signals from another' corresponds to *selectively excluding*. Note that in Minneman in at least [0008] (col. 2, line 10), reference is specifically made to story branches, hence, the aforementioned 'rejecting ... from another' corresponds to effectuating changes in the storyline by possibly excluding certain voters' votes.)

**Claims 5, 15 and 25:**

Note, that although claims 5, 15 and 25 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 4, 14 and 24, respectively, as shown above. Minneman further describes and/or discloses the following limitation.

- *selectively excluding votes for a specific storyline branch comprises excluding the votes within a predetermined period of time before the specific storyline branch occurs* (Minneman, in at least claim 9 claims "monitoring the signals in accordance with predetermined conditions for recognizing the reaction by a predominant public interest

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expressed as a voting measured by the plurality of signals;" (emphasis added) and independent claim 11 states: "the video elements including tokens for indicating a time for the communicating of the signals." (emphasis added) where 'predetermined conditions' pertain to 'voting' and within some '[indicated time]'. Note that this voting scheme includes the exclusion capability described in Minneman [0028] (col. 8, line 55) and thereby meets the limitation.

**Claims 9, 19 and 29:**

Note, that although claims 9, 19 and 29 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 1, 11 and 21, respectively, as shown above. Minneman does not specifically describe and/or disclose the following limitations, but Williams, as shown, does.

- *saving a record of the storyline branch for later replay* (Williams, in at least [0030] states: "Two weeks later the audience votes for Ending 1. The show is now in the hands of the Editor who is instructed to use Ending 1 for the "Answering Machine Dilemma" scene." (emphasis added) where the 'instruction' and reference to an 'Editor', *ipso facto* requires some method of *saving a ... storyline ... for later replay*.)

Minneman's and Williams' inventions both pertain to utilizing audience participation in modifying the evolution of a storyline. Williams' invention also indicates some inventory of scenes for later use. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the inventions of Minneman and Williams to create a more interactive, and efficient system as this affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

10. Claims 6–8, 16–18, and 26–28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minneman/Williams as applied to claims 1, 11 and 21 above, and further in view of Chisholm (US 5400248 A).

**Claims 6, 16 and 26:**

Note, that although claims 6, 16 and 26 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 1, 11 and 21, respectively, as shown above. Minneman/Williams also describes and/or discloses that *votes are weighted* where Williams, in at least [0053] states: "As an incentive for fan club membership, fans may be granted weighted voting rights." (emphasis added). Minneman/Williams, however do not describe and/or disclose determining if the votes are weighted, where the act of *determining* is not specifically mentioned. Chisholm, however, as shown, does describe and/or disclose this element of the limitation. Chisholm, in claims 38 and 39 claim a method where "determining which voter input signals were most critical in obtaining a prescribed set of results; [...] determining which voter input signals were least critical in obtaining a prescribed set of results [...]" (emphasis added) where the noted criticality corresponds to a weighting. Note that Chisholm also specifically mentions weighted voting as in [0017]: "Votes need not be weighted equally." and further in [0011] that "the vote administrator weights voter x's vote by the factor W(x) ..." where the 'administrator', *ipso facto*, *determines* whether a particular vote is to be weighted.

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Minneman/Williams with that of Chisholm to describe a flexible system that allows management of audience choices and how they are to be weighted because it creates a more interactive system and affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

**Claims 7, 17 and 27:**

Note, that although claims 7, 17 and 27 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman/Williams and Chisholm describe and/or disclose the limitations of claims 6, 16 and 26, respectively, as shown

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above. Minneman/Williams do not specifically describe and/or disclose the following limitation, but Chisholm, as shown, does.

- *if the votes are weighted, selectively multiplying the votes by respective weight factors*

(See the rejections of the above claims 6, 17 and 27 wherein Chisholm specifically refers to weighting factor "W(x)".)

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Minneman/Williams with that of Chisholm to articulate a flexible system that allows management of audience choices and how they are to be weighted because it creates a more interactive system and affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

#### Claims 8, 18 and 28:

Note, that although claims 8, 18 and 28 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 1, 11 and 21, respectively, as shown above. Minneman and Williams do not specifically describe and/or disclose the following limitations, but Chisholm, as shown, does.

- *determining if additional votes remain to be accumulated; and wherein if additional votes remain to be accumulated, repeating an accumulation of the votes until all the votes have been incremented* (Chisholm, in at least [0066] states: "Then the system passes through the list again and evaluates all new votes [...] This process is repeated until an iteration occurs on which no new votes are determined. If all votes in the group have been determined by this process (step I), the system is finished and the results are displayed." (emphasis added) where 'the system' in 'repeating a process' corresponds to *repeating an accumulation*. Also, Chisholm claim 12 specifically refers to *accumulating* where "controller means, coupled to said computer system and said plurality of voting units, for accepting or

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rejecting additional voter input signals [...]" (emphasis added) where the 'controller means' that '[accepts] or [rejects] additional voter [ ] signals' corresponds to adding additional votes.

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Minneman/Williams with that of Chisholm to articulate a flexible system that allows management of audience choices and how they are to be weighted and also to ensure that all relevant voters' votes are tabulated because it creates a more interactive and accurate system and thus affords producers an opportunity to increase audience participation, in a reliable manner, and thereby garner greater commercial success for their advertising sponsors.

**Claims 10, 20 and 30:**

Note, that although claims 10, 20 and 30 may have slightly different wording, preambles or structure, they have the same scope and so are addressed together. Minneman and Williams describe and/or disclose the limitations of claims 6, 16 and 26, respectively, as shown above. Minneman and Williams do not specifically describe and/or disclose the following limitations, but Chisholm, as shown, does.

- *the votes are weighted based on a graduated ticket pricing* (Williams, in at least [0006] specifically refers to a "movie". In at least [0053], Williams further states: "Fan club membership, subscription newsletters (on and offline) and other premium fan portal services. As an incentive for fan club membership, fans may be granted weighted voting rights." (emphasis added) where a 'fan club' corresponds to a movie goer, and 'premium ... portal services' corresponds to a particular level and *graduated ticket pricing* which are *weighted* in a fashion based on 'premium [ ] services' obtained such as entrance to a movie theater.)

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Minneman/Williams with that of Chisholm to articulate a flexible system that allows management of audience choices and how they are to be weighted

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and also to ensure that all relevant voters' votes are tabulated because it creates a more interactive system, one which allows participants the opportunity to influence the outcome based on an admission fee (ticket) and thus affords producers an opportunity to increase audience participation and thereby garner greater commercial success for their advertising sponsors.

***Conclusion***

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Dr. **Mark A. Fleischer** whose telephone number is **571.270.3925**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James A. Reagan** whose telephone number is **571.272.6710** may be contacted.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see [<http://pair-direct.uspto.gov>](http://portal.uspto.gov/external/portal/pair). Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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29 February 2008  
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